Supreme Court, U.S.
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90-1679

CASE NO. _____

IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1990

ROBERT G. KILE - PETITIONER

v.

NORTH PACIFIC CONSTRUCTION COMPANY, a corporation; CONCRETE CONSTRUCTION COMPANY, a corporation; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO; LOCAL 1147 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO; CARPENTERS 46 NORTHERN CALIFORNIA COUNTIES CONFERENCE BOARD; VAN BOURG,ALLEN WEINGERG & ROGERS, a professional corporation; VICTOR VAN BOURG; and DOES FOUR through TWENTY - RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BY: ROBERT G. KILE
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QUESTIONS PRESENTED FOR REVIEW

Did the District Court have jurisdiction over the case to dismiss the International "sua Sponte" under FRCP 4(j), alledging it had never been served, thus an allogation of in personam jurisdiction wanting on it.?,

WHEN:

It's agents Local 1147 and the Conference BD. had been served under California Labor Code 1165.3 while in the Superior Court. The code is a carbon copy of Federal statute 29 USC section 185 (d):

> "The service...upon an officer or agent of a labor organization , in his capacity as such, [SHALL] constitute service upon the labor organization"

WHEN:

It's agents , through it's attorney included the International collectively in court papers; the court referenced the International several times prior; AND the Court did NOT dismiss the International upon IT'S noticed D.L.O.P. which was substantially beyond the 120 days under FRCP 4(j)

WHEN:

The FULL case was before the Ninth Circuit prior in 1987 when the Internationàl was included in the UNION notice

of appeal, had made an appearance through IT'S agents' attorney in oral arguement thereto, AND the appeal having been affirmed by the court with the Honorable Anthony M, Kennedy concurring-(Kile v. NPCC; UBCJA, AFL-CIO;, et al 827 F2d 1365 (NINTH) 1987). The INternational was included at all times by the attorney as the "CARPENTERS UNION" collectively and NEITHER court made any distinction at any time.

WHEN:

The entire case was "CLOSED" on "6-21=88" upon entry of JUDGEMENT OF DISMISSAL on a separate document. The case had been docketed (taken) in the Ninth Circuit prior and never remanded on the issue of the SURPRISE service issue at last resort.

Did the Ninth Circuit have jurisdiction over the case if the district court granted S.J. to only the agents which were named only therein, thus excluding the INternational as a party and remaining when the case was closed invoking the necessity for FRCP 54(b)?,

WHEN:

It did not remand on the Issue why the court did not include the International in the S.J.-"service" NEVER

having been an issue at any stage in EITHER court prior, thus NO reason to submit any alledged "good cause" requirement for alledged consideration by the court.

WHEN:

The D.C. had affirmed the judgement / judgement of dismissal as a "FINAL" judgement and that it would "NOT CONSIDER FRCP 54(b)"on Aug 4,1988 when it denied my motions pursuant to FRCP 60 and FRCP 54(b).

WHEN:

The D.C. appeared to have corrected an alledged mistake admitting the previous judgement/dismissal was NOT final when it sumairly dismissed the International without the Ninth Circuit remand as usual and accepted procedure in the context of this case.

Was petitioner correct in believing that since the International had been served through it's agents, that it should have been included in / named in the UNION S.J. filed on June 20,1988; that if it was not "named" the S.J. was not a final determination under 54(b), thus briefing was not ripe/appropriate and that the case MUST be remanded on the surprise issue of service

and Petitioner would have the due process to prove unequivically that the international was / is a party defendant in my suit having been instead effectively denied that right by surprise erroneous issue regarding service?,

WHEN:

Petitioner had a full motion for summary reversal before the Ninth Circuit and it was not considered; possibly because of some discomfort by the court over having any jurisdiction to grant it.

WHEN:

The rightful inclusion of the International in the S.J. of the agents, would make it a final determination under FRCP 54(b) and ONLY the D.C. could correct it's mistake , AND only by remand from the Ninth Circuit.

WHEN:

By reason of the previous UNION appeal , the CT. had by reason of FRCP 54(b) , MADE the International party to the appealconfirming lower court jurisdiction since a personal appearance had been made seeking something adverse to Petitioner - SEE appearances. etc, SEE KILE V. NPCC ,et al 827 F2d 1365 supra.

Did the Ninth Circuit decide any question regarding the EMPLOYER grant of S.J. which was added by ninth circuit court order on Sept. 12,1988?,

WHEN:

The unpublished opinion makes absolutely no reference to the employer .

Was the rejection of the en banc re hearing by the Ninth Circuit a signal that the majority did not believe jurisdiction proper; that jurisdiction was wanting?,

WHEN:

I fully briefed EVERY aspect not only in my opening brief, but in my reply brief; AND in my petition for rehearing/rehearing en banc suggestion.

IS the Baker v Limber case supra 647 F2d 912,916 (ninth 1981) , cited in the unpublished opinion, a factual reflection of my case; is it fitting to MY facts?,

WHEN:

In the Baker case, the entire case had not been closed and judgement of dismissal had not been entered on a separate document as in my case and the full case had not been taken by the court of appeals; the material facts are substantially different that mine.

WHEN:

It was totally and fully accepted by the D.C. in 1986 when I sought reconsideration because I discovered the secret characterization of the amm complt. as a blue print to time bar application, ...; THAT the court was without jurisdiction to consider since the appeal[S] (UNION and Petitioner) had been filed and the case had been taken (docketed)in the ninth circuit with SEVERAL cases to back it up. Dockets 25,45,54

WHEN:

The D.C. accepted the practice of a remand from the Ninth Circuit as usual procedure and then violated that practice by the "sua Sponte"dismissal under the rules and facts controlling which IT had set forth as the standard when it denied my motion for reconsideration.

WHEN:

It is true the court [MAY] "adjudicate the remaining [CLAIMS]", it must have lawful jurisdiction to do so by remand using the facts of [MY] case.

WHEN:

The Ninth Circuit denied my motion for remand under

FRCP 54(b) to lawfully & rightfully exercise my right to due process to prove the International a party.

Did the Ninth Circuit act in the interests of justice or does it appear it acted in a vacuum?

WHEN:

Petitioner acted totally in good faith and conscience that the International should have been "NAMED" in the UNION S.J. and I would not waive it's being a party by submitting briefing without contesting the "sua sponte" dismissal 1st and foremost;an issue created by the D.C

WHEN:

It appears the material points of fact and law [using] the erroneous Baker supra case , substantially overlooked and misaprehended [all] issues hereto fore set forth.

Would this Honorable Supreme Court "contest" my DECISION if it were in my shoes?

WHEN:

It is an "unresolved MERITORIOUS grievance decision". I was not given a proper discharge notice in writing which is a mandatory pre requisite in an alledged just cause discharge (FIRING)from employment under the

Master Agreement-section #30, 49.6, etc.

DOES the unpublished opinion deny me due process and redress/damages because of the manner it departed from usual and accepted procedure?,

WHEN:

At the outset, the Union had a responsiblity to act ministerially with the decision and allow me the due process the arbitrator set forth for a resolution of my grievance being a meritorious grievance.

WHEN:

I have a meritorious defense to my ALLEDGED just cause discharge from employment. SEE Roscello v. South-west Airlines C. (citing Ross v. Bernard 396 US 531) 726 F2d 219-220 1984

WHEN:

I have devoted my life and a SUBSTANTIAL amount of anxiety/distress , suffering , and costs amounting to thousands of dollars toward my right to have my grievance resolved , thus an action to ENFORCE the decision...; OVER ten years, thousands of papers,research time, etc.

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GROUNDS FOR JURISDICTION

Jurisdiction in this court is under 28 USC 2101(c), 1254(1) and local rules #17(a),(b), 20(4). This petition is being filed within 90 days after denial of rehearing filed on Jan 31,1991 to the Nov 21,1990 unpublished opinion filed in the Ninth Circuit. Ninth Circuit judgement was filed in the D.C. on March 7,1991.

The basis of jurisdiction in appeal # 88-15085 in the Ninth Circuit is the entry of judgement of dismissal of the case on a separate document closing the case on 6-21-88. The basis of jurisdiction in appeal # 89-15069 is the sua sponte dismissal of the International being void and invalid seeking remand to re open the case to submit arguement that the surprise service issue created by the D.C. is totally erroneous and not material to the facts of the case # CIV-S-84-526-RAR.

The basis of jurisdiction in the Eastern District CT. was based on 28 USC 1331, 29 USC 185, LMRA of 1947 as amended section 301 regarding an arbitrator decision in favor of Petitioner being a labor management relations case -for breach of contract,breach of fiduciary duty of fair representation,negligence,emotional distress, mal practice and damages.

STATEMENT OF THE CASE/FACTS

The original complaint , supposedly for compliance with the decision of an arbitrator, was filed in Superior CT. and an ammended complaint was removed by the union to Federal CT. after service on the agents local 1147 and 46 Counties Conference BD. of the International (UBCJA, AFL-CIO) . The employer NPCC/CCC had been served and included in the removal to FED. CT. in 1984. Van Bourg et al were also served and removed.

The UNION was being sued for breach of the fiduciary duty of fair representation/negligence/damages; the EMPLOYER was being sued for breach of contract/damages; the ATTORNEY was being sued for mal practice/damages.

The UNION, named in the complaint being the United Brotherhood of Carpenters and Joiners of America,AFL-CIO; Local 1147, (UBCJA,AFL-CIO); Carpenters Northern California Conference BD;, appealed on statute of limitations defense under 28 U.C.S. 1292 (b). Petitioner appealed the grant of the EMPLOYERS summary Judgement[1]. SEE NPCC;UBCJA,AFL-CIO 827 F2d 1365 (ninth) 1987.

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1. Petitioner fervently believed the amm. Complt. was a blueprint

for timebar application being fraudulntly characterized as an action to vacate an arbitration decision in a secret conspiracy because of secret knowledge,intent and design to use federal case law having the applicable analogy fitting an action based on "vacating" .

100 days under CCP 1288 in California to "vacate" vs. 4 years to enforce (CCP 337). I am not , nor have I ever sought to personally "contest" the decision; I believe it needs to be ENFORCED.

I was substantially niave and ignorant of the law when I hired my attorney and I fully trusted him. I discovered he didnot even attach the "DECISION" to the complint and it was NEVER reviewed prior to the case being reopened after the appeals. He promised me a full trial and I had absolutely no idea the legal result would be an alledged timebar at the outset which did not fit the facts.

I HAVE AN "UNRESOLVED MERITORIOUS GRIEVANCE DECISION"; I WAS NOT GIVEN A PROPER DISCHARGE NOTICE IN WRITING OF WHICH IS A MANDATORY PREREQUISITE FOR AN ALLEDGED JUST CAUSE DISCHARGE (firing) FROM EMPLOYMENT..UNDER SECTION #30 OF THE MASTER AGREEMENT.

THE DECISION: "The arbitrator has considered the evidence pertaining to the merits of the grievance and determines that the grievance is meritorious and that the grievant is entitled to resolve this matter".

After the case was reopened in the D.C , Judge Ramirez (now having quit as a judge going into alledged practice) denied every Petitioner request for relief, further and totally ignoring my decision resulting in S.J. for the agents Local 1147 and 46 Counties; it did not include/ name the international. Judgement was filed and docketed. Judgement of dismissal was entered on a separate document the day after being 6-21-88 when the entire case was "CLOSED". Petitioner noticed a hearing for relief under FRCP 60 and 54 (b) which was denied

on Aug 4,1988, affirming that the S.J. was a "FINAL" judgement and it "would not consider 54 (b)." Petitioner had previously filed appeal to the judgement of dismissal which was docketed in the ninth circuit the same day the lower court denied my motions[2].

---

2. Petitioner filed appeal because the D.C. did not respond in time to my request to stay the entry of dismissal. When I filed my appeal and upon my noticing my motions, I was not aware the court had "CLOSED" the entire case untill I received the copies of the docket for purposes of preparing my appeal...:

"CLOSED"
" DATE: 6-21-88 "

During the time the Ninth Cirtuit was exercising full jurisdiction over the case , I motioned it to remand to the D.C. regarding the remaining defendant under FRCP 54 (b) which was denied by court order. I also motioned to add the NPCC/CCC grant of S.J. and my previous appeal was re noticed to include the employer which was ALSO decided and GRANTED by Ninth Cirtuit.

THEREAFTER, the D.C. granted a sua sponte dismissal order in favor of the International under FRCP 4 (j). I appealed. The front cover of the copies of the docket sent to me STILL had the SAME:"closed-6-21-88". The order was dated Nov 1,1988; I motioned for

reconsideration which was denied on Dec 12,1988[3].

---

3. The D.C. stated in a footnote (docket 150), that: "In light of the entry of judgement and the appeals filed the court seriously doubts it had subject matter jurisdiction.. in light of Plaintiff's pro se status and in order to clarify the record and expedite a final resolution of this action, the court issues thic order despite the jurisdictioal issue".

the agents having also challenging the courts jurisdiction in my previous motion, stated ALSO a challenge to the court exercising jurisdiction in a single page letter dated September 6,1988 .

Plaintiff appealed using the SAME front cover having "CLOSED" "6-21-88" as the basis of preparing my appeal.

The Ninth Circuit affirmed the S.J. because of the International alledgedly never being served directly and also affirmed the S.J. because I did not brief it, believing it to be a non final determination because the International was not "NAMED" in it being a party defendant;because of service on agents under it's controll. Petitioner's petition for rehearing /en banc was rejected and denied on January 31,1991

The district court filed affirmed Ninth Circuit judgement on March 7,1991...."filed and entered Nov 20,1990" (should be NOV 21,1990)

DIRECT AND CONCISE ARGUEMENT

When the District Court denied my motion for relief under FRCP 60 and 54(b) by court order on August 4, 1988 affirming the prior judgement/entry to be a "FINAL" judgement ("that 54(b) would not be considered"), and later [dismissed] the International sua aponte in order to [make] the prior determination final, it in effect, corrected it's mistake of affirming final judgement and that was not lawful, usual or proper procedure. The sua sponte order is therefore void for want of jurisdiction and totally erroneous on the service requirement directly on the international.

In all actuality, the D.C. violated it's OWN standards and accepted procedure set forth in dockets 25,45,54 wherein it stated PRIOR in 1986, that the filing,and docketing of the appeal prevented further court jurisdiction over the case without remand .
SEE APPENDIX herein.

The Baker v. Limber case referenced in the opinion of Nov 21,1990, essentially SUPPORTS petitioner's contentions because HIS material facts are substantially different than the material facts of my case.

The "adjudication of his remaining claims" was a continuation of the courts jurisdiction because the case had not been closed, there was NO entry of judgement entered on a separate document, and the appellate did not acquire full jurisdiction over the case as in mine. The D.C. did not further affirm a previous NON final judgement to be a final judgement for purposes of 28 USC 1291 as in mine.

The D.C. reasoned divestiture of jurisdiction citing the case of Smith v. Lujan 588 F2d 1305 (9th-1979) in my motion for reconsideration in 1986-see statement of the case/facts , see appendix. The court stated:

> "district court lacked jurisdiction to rule on correction of error in judgement after notice of appeal was filed , since the D.C. did not obtain leave of court of appeals".

SEE Beliz v. W.H. Mc Leod & Sons Packing CO. 765 F2d 1376 [4] (5th-1985):

> "We note further that the D.C. order "supplementing" Judgement" [entered] after the valid notice of appeal was filed and docketed was invalid no matter how that order was characterized".

SEE Local 1545 v Inland Steel Coal Co. 876 F2d 1289 (7th-1989):

> "Where D.C. corrected its mistake in judgement after appeal was docketed, it was required to have leave of the court of appeals to make the correction".

SEE Rucker v. United States Dept of Labor 798 F2d 981 (6th-1986):

> "Court of appeals acquired exclusive jurisdiction over case upon Plaintiff's timely appeal from appealable final order of [dismissal] , and thus district court was without jurisdiction to subsequently rule on Plaintiff's previously filed motion for reconsideration".
>
> "District court loses jurisdiction over action when a party perfects appeal unless appeal is untimely, is from nonappealable nonfinal order, or raises only issues that were previously ruled upon in case by appellate court ".

SEE Corning Glass Works v Sumitomo Elec. U.S.A. 683 F Supp 980 (SDNY-1988)

SEE Gould v. Mut Life Ins Co. of New York 790 F2d 772 (9th-1986)

THEREFORE , it is revealed the District Court had substantially violated accepted and usual procedure when it arbitrairly dismissed the International AFTER it had entered and docketed the AUGUST 4,1988 order AFFIRMING the prior ENTRY of dismissal to be "final" for purposes of the appeal. Clearly, it is revealed the D.C. should have been remanded the case upon my motion to do so in the NINTH circuit who ALSO violated usual and accepted procedure in my case by denying that request.

SEE also Costal Corp v Texas Eastern Corp 869 F2d 817 (5th-1989)

SEE Willhauck v Halpin 919 F2d 788 (Nov 21,1990):

"In order to be final and conclusive , appealable judgement which ends litigation must be [entered] on separate document and properly [entered] in civil docket".

"Where lower Court [DOES NOT] designate order as to some claims or parties to be final , it has the power to modify , revise or reverse decision at any time PRIOR to making such designation or [properly closing the file]".

"Time of appeal accrues only upon court's compliance with the rules on date of [entry of judgement]".

SEE FED CIV PROC # 2579 and FED COURTS # 681-683.

SEE D.C. DOCKET # 25,45,54

Regarding the service issue , the case of Kreshtool v. Longshoremens Assn 242 F Supp 552-561 (1965) in LABOR RELATIONS # 763 stated that service on the agent local union, constituted valid service on the international union.

SEE Heck v C.H. Heist 635 F Supp 654-657 (SDWVA-1986) citing Kreshtool supra.

SEE Claycraft v United Mineworkers 204 F2d 600 (1953)
United Mineworkers v Patton 211 F2d 746 (1954)

Washington v Norton 588 F2d 441 (1979)

SEE 29 USC section 185 (d):

section 301 (d):

California labor Code 1165.3:

> "The service ..upon an officer or agent of a lagor organization, in his capacity as such, SHALL constitute service upon the labor organization".

It is revealed the International has a substantial degree of controll over it's subordinate affiliates Local 1147 and the Conference BD. making them agents subject to the controll of the International issuing the charter to them. The agents are clearly an arm or branch of the International and a conduit through which it carries out certain of it's work...and the D.C. should not have dismissed the International . The International undoubtedly had knowledge of the suit and the agents did nothing whatsoever to contest the valid service making the International a party. Surely, the degree of controll by the International could be carried out by the agents in the court's OWN D.L.O.P. in docket #19 and they did NOTHING untill the service issue was briefed by petitioner. They submitted briefing favorable to the International only, when therein they admitted the only issue was

the service issue , thus admitting unequivically the agency relationship of BOTH subordinates of the International....

SEE also the published opinion in Kile v. NPCC,et al supra.

EVERYTHING that the agents done as well as what they did not do points to the valid service constituting service on the International carrying out it's work through them. Therefore, the service was 'waived' and the International is a party defendant and should have been named in the agents summary judgement. The court and the agents attempted to isolate the International from this suit and that is not right.

My unresolved meritorious grievance decision is being completely ignored and I am being denied due process redress and restitution in my vigilance to protect that right seeking an honest and truthful resolution and to show I do NOT "have unclean hands" as alledged by the Union and the EMPLOYER in complicity.

I pray this court grants CERTORARI or in the alternative,

And to save time,judicial economy,continuing stress and expense...to issue a decision on the facts being presented , thus finding the EMPLOYER breach of contract (specific performance to issue a proper written discharge for cause to Petitioner); a breach of fiduciary duty of fair representation/negligence including emotional injury as against the UNION (including the International) for failing to act ministerially to my meritorious grievance decision going now on over 10 (ten) years to something which should have been taken care of immediately being an arbital forum grievance procedure ; that the International and it's agents are found fully responsible and that this Honorable court recognize my tremendous vigilence to protect my right to due process in my grievance.

The Nov 21,1990 unpublished opinion is not the appearance of justice in the context of the material facts and laws controlling.

SEE FED CIV PROC 2463 which prevents a grant of summary judgement when: "Summary Judgement procedure should be used sparingly so that no Plaintiff having scantilla of [MERIT] to his cause should be denied his day in CT."

Obviously the fact remains that without a proper written discharge notice mandated by the agreement under sect 30, there exists the unresolved issue of the EMPLOYERS and the UNION'S alledged "unclean hands" implying [A] just cause discharge and that has yet to be resolved. I am not guilty of any wrong doing and this stigma is a terrible continuing burden.

My seventh amendment right as well as my added right under the constitution to due process has been violated. SEE Roscello v Southwest Airlines Co. 726 F2d 219(R.H. column -center page) (Texas-1984):

> "His termination notice listed as reasons for his firing failure to perform duties and excessive absenteeism".
>
> Citing Cox v C.H. Masland & Sons 607 F2d 138 (5th-1979)
>
> Citing Ross v Bernard 396 US 531, 90 SCT 733, 24 LED 2d 729 (1970).

I have delt with this continuing burden preventing peace of mind for ten years , it has affected my life tremendously including the time required to handle this taking me away from my family and my other responsibilities; I am held captive in this unresolved grievance.

Please grant Petitioners requests for relief and a

and a thank you for your review.

SEE: Bowen v. U.P.S. 74 Led 2d 408,409 (1983)

Dutrisac v Caterpillar Tractor CO.
511 F Supp 723 (1981)
249 F2d 1270 (9th-1983)

Galindo V. Stoody 793 F2d 1513 (9th-1986)

Peterson v Kennedy 771 F2d 1254 (9th)

Vaca v Sipes 17 Led 2d 842,(1967)

Zuniga v United Can Co. 812 F2d 451 (9th-1987)

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED THIS APRIL 18 ,1991

ROBERT G. KILE

APPENDIX

FILED NOV 21,1990

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Robert G. Kile, Plaintiff-Appellant,

v.

North Pacific Construction Company, CARPENTERS 46 Northern California Counties Conference Board and CARPENTERS Local Union No. 1147, Defendants-Appellees.

Nos. 88-15085
89-15069
D.C. No. CV-84-526-RAR

MEMORANDUM

Appeal from the United States District Court for the Eastern District of California Raul A. Ramirez , District judge presiding

Argued and submitted October 3,1990 San Francisco, CA

Before: Schroeder,Ferguson,and Brunetti, C.J.

Plaintiff appeals the dismissal of one defendant for lack of cervice of process and the grant to summary Judgement in favor of two other defendants. We Affirm.

In 1983, the plaintiff filed an action under Labor Management Relations Act #301 alledging breach of duty of fair representation against several unions. The Union defendants included the United Brotherhood of Carpenters and Joiners of America, AFL-CIO; Local 1147 of the United Brotherhood; and Carpenters 46 Northern

Counties Conference Board.

In June 1988, the District Court granted summary judgement for local 1147 and Carpenters 46. The Plaintiff appeals this order in No. 88-15085. In November 1988, the district court ordered that the United Brotherhood be dismissed sua sponte according to Fed. R. Civ. P. 4(j) for failure of service of process. A motion for rconsideration was denied. Plaintiff appeals these orders in Nos. 88-15733 and 89-15069. The appeals have been consolidated. 1/

This court reviews a sua sponte dismissal under Fed. R. Civ. P. 4(j) for abuse of discression. Townsel v. Contra Costa County Cal. 820 F2d 319 (9th-1987). Absent proof of a separate service of process on the United Brotherhood, Fed R. Civ. P. 4(j) authorizes the district court to dismiss that defendant upon notice to the plaintiff and an opportunity to show "good cause" why the complaint was not timely served. The notice requirement is satisfied if the plaintiff files a motion for reconsideration of dismissal and is allowed an opportunity to demonstrate "good cause" at that point. Whale v. United States, 792 F2d 951,952 (9th-1986). In response to Kile's motion for reconsideration, the

1/ After consolidation, appeal no. 88-15733 was dismiss-

ed for nonpayment of filing fees, However, this dismissal does not affect the issues before this court district judge issued an order which rejected the plaintiff's arguements that any defect in service of process had been waived.[2/] The district court did not abuse it's discression in dismissing the International union sua sponte for lack of service of process five years after filing the complaint. We affirm the dismissal order and the denial of reconsideration. Appeal no. 89-15069.

After filing his appeal of the district court's summary judgement order, the plaintiff decided that the order was not a final appealable order since the International union had not yet been dismissed. However. a judgement will be treated as final for jurisdictional purposes, even if not final at the time the appeal was taken, if all remaining claims have since been adjudicated. Baker v Limber , 647 F2d 912,916 (9th-1981). Thus, this court has jurisdiction over the summary judgement appeal.

Apparently believing the summary judgement order regarding the two local unions was not appealable, the plaintiff did not present any arguements in his briefs why the summary judgement was erroneous. In Collins v. City of San Diego, 841 F2d 337 (1988). we held that

"]i]t is well established in this circuit that claims which are not addressed in the appellant's brief are deemed abandoned."

2/ The Plaintiff has never attempted to offer a "good cause" explanation for the delay in service of process. No reasons are apparent to justify the failure to serve the union. Although now proceeding Pro Per, at the time the complaint was filed the plaintiff was represented by an attorney. This circuit has held that ignorance or inadvertance of an attorney can not be good cause. See Townsel v Contra Costa County Cal , 820 F2d 319,320 (9th-1987).

Id at 319. Accordingly, we hold the plaintiff has waived his appeal in No. 88-15085 of the summary judgement order in favor of local 1147 and Carpenters 46 Northern Counties Conference Board.

The appeals in No 88-15085 and No. 89-16069 are AFFORMED.

PAPERS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

Case Callendar for "Monday, September 12,1988 continued" "OFF CALLENDAR" -(15th place) "CIV S-84-526 Kile v. N.P.C. closed" -(RAUL A. RAMIREZ, JUDGE)

ORDER FILED AUG 4,1988 - CIV S-84-526-RAR

Robert G. Kile, plaintiff

v.

North Pacific Construction Company, a corporation ,et al, defendants.

"Presently pending on this court's law and motion callendar for August 8,1988 is plaintiff's motion for relief from judgement pursuant to FRCP 54(b)and(60(b). Plaintiff has also filed a request to stay enforcement of the judgement. Judgement was entered on June 21,1988.

By the present motion, Plaintiff seeks relief from the aforesaid order and entry of [final] judgement pursuant to FRCP 54(b)and, in the alternative , upon FRCP 60(b).

Rule 54(b) states that any order which adjudicates the rights and liabilities of fewer than all the parties to the action, is subject to revision at any time before the entry of judgement adjudicating all the claims and the rights of all the parties. As stated previously, FINAL judgement was entered in this action on June 21, 1988. Accordingly, rule 54(b) is not applicable in the instant action and will not be considered by the court". DOCKET # 143 (see footnote 3 on page 15 at this time)

ORDER FILED JUN 7,1985 -CIV S-84-0526-RAR

Robert G. Kile, plaintiff

v.

North Pacific Construction Company, a corporation,et al defendants.

"Presently pending on this court's callendar of june 7,1985 at 11 a.m. , is a status conference in the above entitled action. On may 10,1985, the defendants' consolidated motion for summary judgement was heard. At the time of the hearing on the motion, the court denied defendants United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Local 1147, United Brotherhood of carpenters and Joiners of America, AFL-CIO and the Carpenters 46 Northern Counties Conference Board motion for summary judgement but indicated it would entertain defendants request for an interlocutory appeal pursuant to 28 USC 1292 . Due to the fact that this court will shortly grant that request..it is hereby ordered that the previously scheduled status conference set for June 17,1985 is vacated".

DOCKET # 25 (see top of page 6 and footnote 1 on P12,13)

ORDER FILED FEB 12,1986 - CIV S-84-526-RAR

Robert G. Kile ,plaintiff

v,

North Pacific Construction Company, a corporation,et al defendants.

"Presently pending on this court's law and motion callendar for feb 24,1986 is plaintiff's Robert G. Kile motion for reconsideration pursuant to FRCP 60(b).

"]T]he filing of the notice of appeal divests the district court of jurisdiction to dispose of the motion [for reconsideration] after an appeal has been taken, without remand from [the] court [of appeals]..Scott v Younger 739 F2d 1464,1466 (9th-1984)..Smith v lujan 588 F2d 1304,1307 (9th-1979). Hence the appeal filed by the unions as well as the appeal filed by the plaintiff divests this court of jurisdiction to consider plaintiff's motion for reconsideration".
DOCKET # 45

ORDER FILED SEPT 11,1986 - CIV S--84-526-RAR

"Presently pending on this courts law and motion callendar for Sept 22,1986, is plaintiffs motion to vacate a prior order of the court dated June 7,1985*. By order dated June 7,1985, this court denied the unions motion for summary judgement and allowed an interlocutory appeal pursuant to 28 USC 1292(b). Plaintiff now requests this court to "vacate/recall/set aside" said order. Plaintiff has previously filed a substantially similar request seeking "reconsideration" of the June 7th order. In an order dated Feb 12,1986, the court reasoned that it had been divested of jurisdiction by the UNION'S notice of appeal, and therefore, plaintiffs request for reconsideration was denied. For the very same reason, the present request must likewise be denied. Due to the pending appeal, this court

this court is without jurisdiction to vacate or any other fashion modify the June 7th order. See Scott v Younger 739 F2d 1464,1466 (9th-1984).

DOCKET # 54 (see ARGUEMENT page 16-23)*

PUBLISHED OPINION - KILE V. NPCC; UBCJA,AFL-CIO; et al

827 F2d 1363 (9th-1987) ;

> "Robert M. Hirsch and Michael B. Roger, San Fransisco, Cal., for defendant United Brother-Hood of Carpenters." - (see page 20,21)

I declare under penalty of perjury that these appendice entries are true and correct and I believe them material to this Petition under review.

EXECUTED THIS APRIL 27,1991

ROBERT G. KILE